

Decision 01-11-016 November 8, 2001

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of the City of Oceanside for an Order authorizing construction of a private crossing used by the public, on private property, at separated grades. The crossing connects privately held land located off Oceanside Boulevard, between El Camino Real and Rancho Del Oro Drive. The crossing occurs on the Oceanside-Escondido Light Rail Project.

Application 01-08-001  
(Filed August 1, 2001)

**O P I N I O N**

**Summary**

City of Oceanside (City) requests authority, on behalf of Evergreen Distributors, Inc., (Evergreen) to construct a new private two-lane bridge above existing North San Diego County Transit Development Board (NCTD) right-of-way (ROW), replacing an existing private at-grade crossing in Oceanside, San Diego County.

**Discussion**

City has applied, on behalf of Evergreen, for authority to construct a grade separation. The old existing at-grade private crossing and surrounding 80-acre site are owned by a privately held corporation, Evergreen. The railroad is owned and operated by the NCTD.

The new grade separation structure will be constructed as part of the larger Evergreen Nursery Project (Project). The 80-acre project site is located on

the south side of Oceanside Boulevard, east of El Camino Real and west of Rancho Del Oro Drive in Oceanside, San Diego County.

The proposed Project involves reconstructing an existing Silica Mining Site into a retail nursery. The Project consists of a commercial nursery business on the premises, which includes two primary nursery areas where plants are grown and sold, a sales building and administration building, a maintenance building and facility building, a compost production area, and a water collection pond. Approximately 37.4 acres are proposed for use by nursery operations, about 7 acres will be restored with native plant habitat and placed under an open space easement, and the remaining 35.75 acres that contains steep slopes and native plant habitat will also be placed under an open space easement.

Access to the site will be from Oceanside Boulevard. An approximately 100-foot-long by 28-foot-wide bridge will be constructed over Loma Alta Creek and the NCTD tracks at the location of an existing road in the center of the site. The purpose of the crossing is to access the south side of the site.

The proposed nursery will be open to the public with an anticipated 150 public visits per day during the spring and fall, and less during the winter. Hours of operation will be from 7:00 a.m. to 5:00 p.m. daily. No operations are proposed for the nighttime hours.

The seven-acre portion of the site between Loma Alta Creek and Oceanside Boulevard will be the most intensely used portion of the site by customers and employees. This area is proposed to hold a 128-square-foot cashiers hut, 390-square-foot dry goods building, a 4,000-square-foot houseplant building and a 7,200-square-foot irrigation supply building, an 840-square-foot administration/sales building and concrete paved parking lot and interior roadway system.

Flatter portions of the site south of the creek and railroad tracks will be used for plant growing and storage in containers with existing dirt roads used for access by the public and nursery workers. Gravel would be placed on the existing dirt roads for erosion control purposes. A 6,250-square-foot maintenance facility and 5,104-square-foot equipment storage shed are also planned for the southern portion of the site. All equipment maintenance will be conducted indoors.

Access to the Project site is from Oceanside Boulevard. Loma Alta Creek and the NCTD railroad ROW divide the Project site into two segments, north and south. The grade separation structure is necessary to provide access to the southern portion of the site, over Loma Alta Creek and the railroad ROW. A Vicinity Map and Site Plan are attached as Appendix A.

The new grade separation will replace an existing private at-grade crossing approximately located at milepost 3.70. A second nearby private at-grade crossing will be closed as a result of construction of the grade separation structure. The completed structure will meet the clearance requirements applicable under Commission General Order 26-D. Evergreen and NCTD have entered into a Memorandum of Understanding with respect to construction and maintenance of the subject grade separation structure.

City is the lead agency for this project under the California Environmental Quality Act of 1970 (CEQA), as amended, Public Resources (PR) Code Section 21000 et seq. In order to satisfy the CEQA requirements, on August 31, 1998, City prepared an Initial Study (IS) for the Evergreen Nursery Project (Project). The IS found that the Project would not significantly affect the environment provided certain mitigating measures were enacted. On October 20, 1998 City filed a Mitigated Negative Declaration with the Office of Planning and Research

in Sacramento and with the San Diego County Clerk approving the Project and its various mitigations.

The Commission is a responsible agency for this project under CEQA (PR Code Section 21000 et seq.). CEQA requires that the Commission consider the environmental consequences of a project that is subject to its discretionary approval. In particular, to comply with CEQA, a responsible agency must consider the lead agency's Environmental Impact Report or Negative Declaration prior to acting upon or approving the project (CEQA Guideline 15050(b)). The specific activities, which must be conducted by a responsible agency, are contained in CEQA Guideline Section 15096.

The Commission has reviewed the lead agency environmental documents. This documentation identified several potential environmental impacts associated with the proposed construction project. The documentation analyzed nine potential environmental impacts related to the Project including impacts related to air quality, water quality, geologic conditions, biological resources, transportation and noise. Mitigation measures were identified and adopted by the lead agency. These mitigation measures will be implemented as specified by the lead agency to eliminate or substantially lessen those environmental impacts to a less-than-significant level.

Safety, security, transportation and noise are within the scope of the Commission's permitting process. The lead agency's IS did not identify environmental impacts related to safety and security.

Mitigation measures adopted in the lead agency's Mitigated Negative Declaration to address the potential impacts to transportation require constructing improvements to the Project driveway and street at Oceanside

Boulevard to allow for westbound left-turns and eastbound right-turns into the Project facility. Outbound traffic will be restricted to right-turns only.

Potential noise impacts to the environment will be mitigated by restricting construction activities to between the hours of 7:00 a.m. and 7:00 p.m., Monday through Saturday. In addition, all on-site construction staging areas will be a minimum of 200 feet from the edge of the Loma Alta Creek. For operational noise impacts, all green waste grinding operations will be restricted to between 7:00 a.m. and 5:00 p.m. Green waste processing machinery is required to be placed in a manner that precludes a direct line of sight to any residence to the south and southeast of the composting operations area.

With respect to the impacts and mitigation measures related to our permitting authority, we find that the lead agency adopted feasible mitigation measures to eliminate or substantially lessen the environmental impacts resulting from construction noise and traffic, as well as from operational noise and traffic of the Project. We also believe approval of the project is consistent with the July 20, 1994, US Department of Transportation – Federal Railroad Administration booklet entitled “A Guide to Crossing Consolidation and Closure.” The guide summarized extensive railroad safety research studies by stating:

We also support the efforts underway in several states to adopt laws that facilitate the elimination of grade crossings, and we encourage all states to make the elimination of unnecessary and redundant grade crossings a priority public safety issue.

The replacement of an old existing outdated private crossing with a new modern grade separation, which would preclude the possibility of train vs.

vehicle collisions, is consistent with Federal, State and local guidelines and policies.

The site of the proposed project has been inspected by the Commission's Rail Safety and Carriers Division (RSCD) Rail Crossings Engineering Section staff. Staff examined the need for and the safety of the proposed grade separation and recommends that the application be approved.

The application was found to be in compliance with the Commission's filing requirements, including Rules 38 to 41 of the Rules of Practice and Procedure. Site maps of the grade separation are as shown on plans attached to the application and Appendix A.

In Resolution ALJ 176-3069, dated August 23, 2001 and published on the Commission Daily Calendar on August 24, 2001, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. Since no hearings were held, this preliminary determination remains accurate. The Commission's RSCD staff recommends that this application be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations made in Resolution ALJ 176-3069.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Public Utilities Code Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

### **Findings of Fact**

1. Notice of the application was published in the Commission Daily Calendar on August 3, 2001. There are no unresolved matters or protests; a public hearing is not necessary.

2. City requests authority, on behalf of Evergreen, to construct a new modern private two-lane bridge above existing NCTD ROW, replacing an old outdated existing private at-grade crossing in Oceanside, San Diego County.

3. The grade separation structure is required to provide safe access for employees and customers to adjacent private property, across NCTD ROW.

4. Public convenience, necessity and safety require construction of the grade-separated crossing, in connection with the construction of the Evergreen Nursery, as set forth in Appendix A, and as more fully described in the application.

5. City is the lead agency for this project under the CEQA, as amended.

6. City prepared an IS on August 31, 1998.

7. City filed a Mitigated Negative Declaration on October 20, 1998 approving the Project with the State Office of Planning and Research and County Clerk of San Diego as Evergreen Nursery Project (D-9-98, C-11-98). The project was determined to have no major significant adverse impacts on the environment.

8. The IS was made available for public review at the City's Planning Department on October 20, 1998.

9. It is the US Department of Transportation – Federal Railroad Administration (FRA) policy to eliminate at grade crossings in the interest of public safety.

10. The conversion of an existing Silica Mining site into a nursery with trees, shrubs, flowers and other plants should have an overall beneficial effect in restoring the site to its former natural form.

11. The Commission is a responsible agency for this project and has reviewed and considered the lead agency's IS and Mitigated Negative Declaration.

12. Safety, security, transportation, and noise are within the scope of the Commission's permitting process.

13. The lead agency did not identify environmental impacts related to safety and security.

14. The Commission finds that for the noise and transportation environmental impacts identified in the IS and discussed in this decision, the lead agency adopted feasible mitigation measures to eliminate or substantially lessen the impacts to a less-than-significant level.

### **Conclusion of Law**

The application should be granted as set forth in the following order.

## **O R D E R**

### **IT IS ORDERED** that:

1. City of Oceanside (City) is authorized to construct a new private two-lane bridge above existing North San Diego County Transit Development Board right-of-way, replacing an old existing private at-grade crossing in the Oceanside, San Diego County, as set forth in Appendix A, and as more fully described and indicated by text and plans attached to the application.

2. The new private grade separated crossing shall be identified as Crossing Number 106E-3.70-AX.

3. Clearances shall be in accordance with General Order (GO) 26-D.

4. Walkways shall conform to GO 118. Walkways adjacent to any trackage subject to rail operations shall be maintained free of obstructions and shall be promptly restored to their original condition in the event of damage during construction.

5. Construction and maintenance costs shall be borne in accordance with an agreement entered into between parties. A copy of the agreement shall be filed



by City with the Commission's Rail Safety and Carriers Division prior to commencing construction. Should the parties fail to agree, the Commission will apportion the costs of construction and maintenance by further order.

6. Within 30 days after completion of the work under this order, City shall notify the Commission in writing that the authorized work was completed.

7. This authorization shall expire if not exercised within three (3) years unless time is extended or if parties do not comply with the above conditions.

Authorization may be revoked or modified if public convenience, necessity, or safety so require.

8. The application is granted as set forth above.

9. Application 01-08-001 is closed.

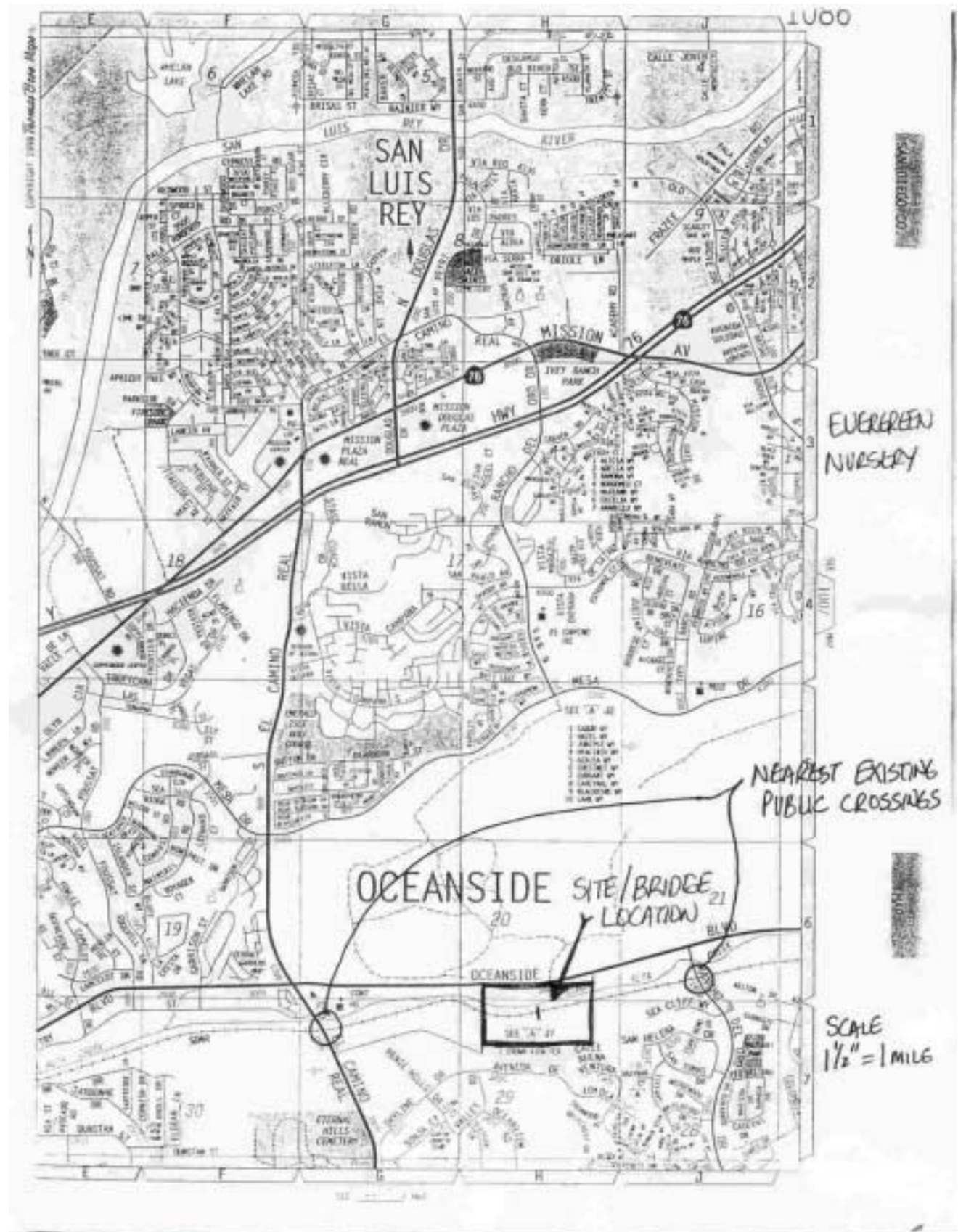
This order becomes effective 30 days from today.

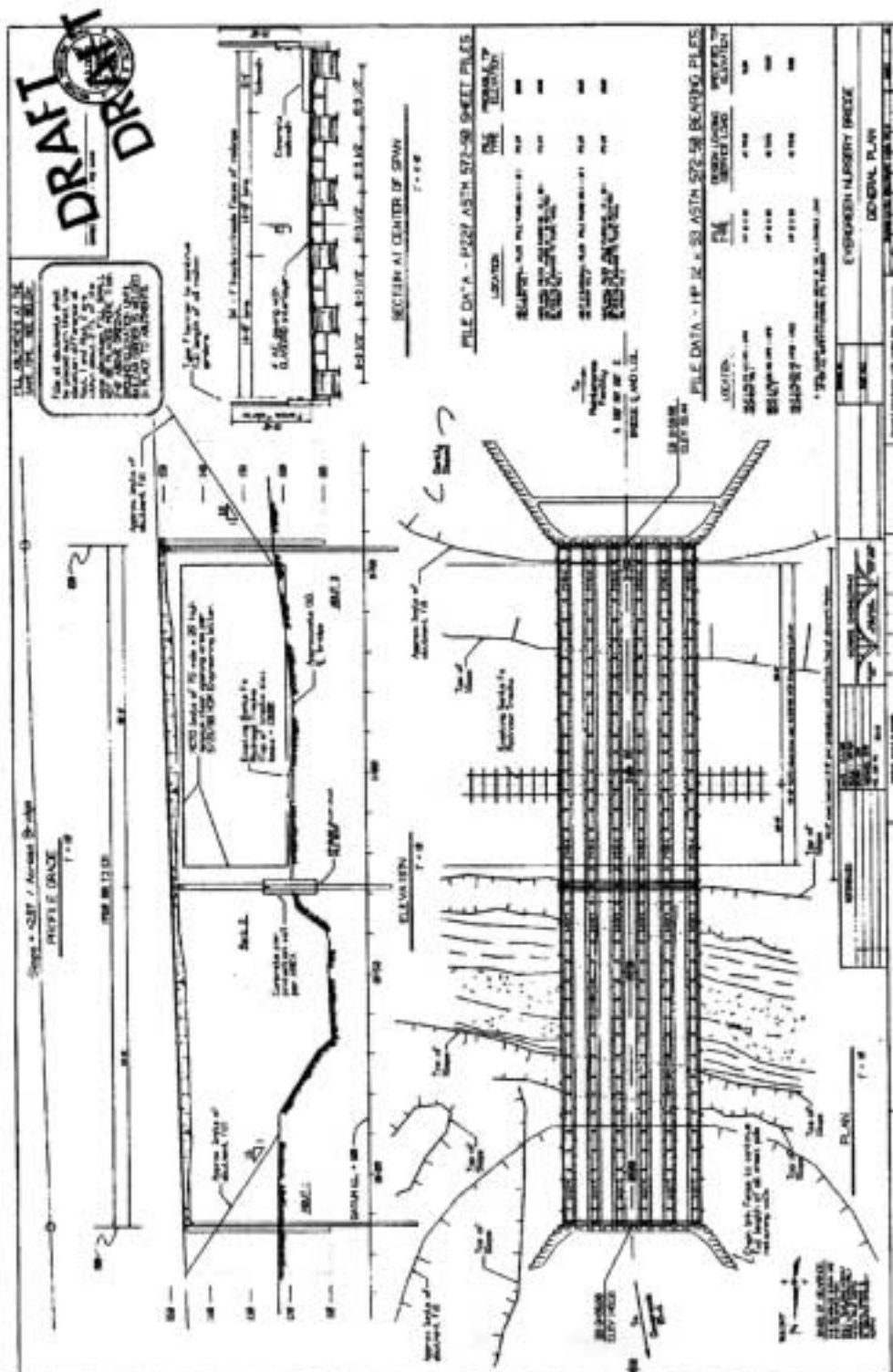
Dated November 8, 2001, at San Francisco, California.

LORETTA M. LYNCH  
President  
RICHARD A. BILAS  
CARL. W. WOOD  
GEOFFREY F. BROWN  
Commissioners

Commissioner Henry M. Duque,  
being necessarily absent, did not  
participate.

A.01-08-001 RSCD/KLK/RRT/jfp/vdl







CITY OF OCEANSIDE  
PLANNING DEPARTMENT

## MITIGATED NEGATIVE DECLARATION

TO ☒ OFFICE OF PLANNING AND RESEARCH  
1400 TENTH STREET, ROOM 121  
SACRAMENTO, CA 95814

☒ RECORDER/COUNTY CLERK  
COUNTY OF SAN DIEGO  
P.O. BOX 1750  
SAN DIEGO, CA 92112-4147

PROJECT TITLE AND FILE NUMBER:  
EVERGREEN NURSERY PROJECT (D-9-98, C-11-98)

PROJECT LOCATION:  
South of Oceanside Boulevard, east of El Camino Real and west of Rancho del Oro Drive in the City of Oceanside.

PROJECT DESCRIPTION:

The proposed project involves reconstructing a former silica mining site into a retail nursery.

FINDING: Pursuant to the provisions of Ordinance No. 88-31, pertaining to procedures and guidelines to implement the California Environmental Quality Act (Public Resources Code Section 21000 et. al.), the proposed project has been reviewed by the Environmental Review Committee established by ordinance to be responsible for evaluating the information. The Environmental Review Committee, after study of the facts and findings, has on August 31, 1998 determined that the project will not have a significant effect on the environment.

☐ THE PROJECT WAS DETERMINED TO HAVE NO MAJOR SIGNIFICANT ADVERSE EFFECT UPON THE ENVIRONMENT.

☒ THE PROJECT WAS DETERMINED TO HAVE NO MAJOR SIGNIFICANT ADVERSE EFFECTS UPON THE ENVIRONMENT PER COMPLIANCE WITH THE FOLLOWING CONDITIONS:

See attached Initial Study

Initial Study prepared by:  
Jerry Hittelman, Senior Planner

Contact Person:  
Gerald Gilbert, Senior Planner

The Initial Study is available for public review and may be examined at:

City of Oceanside  
Planning Department  
300 N. Coast Highway  
Oceanside, CA 92054

SIGNATURE

For: Michael J. Blessing, Planning Director

October 20, 1998

DATE